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**Competition Commission's submission to the Department of Justice and Constitutional Development on the
Legal Practice Bill [B20 2012]**

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PREFACE

This submission was prepared by the Competition Commission of South Africa, which is a statutory body established in terms of the Competition Act 89 of 1998, as amended, and has jurisdiction throughout South Africa.

The Commission is empowered by section 21(1)(k) of the Competition Act, no 89 of 1998 to review legislation and regulations from a competition perspective.

Table of Contents

Preface

	Page
1. Executive summary.....	4
2. Introduction: Purpose of the Bill.....	4
3. A fee structure.....	5
3.1. The Commission's view.....	5
3.2. The Commission's recommendation.....	6
4. Professional conduct: code of conduct.....	6
4.1. The Commission's view.....	7
4.2. The Commission's recommendation.....	7
5. The South African Legal Practice Council.....	7
5.1. The Commission's view.....	7
5.2. The Commission's recommendation.....	8
5.3. The Commission's view.....	8
5.4. The Commission's recommendation.....	8
6. Disciplinary bodies and Regional councils.....	9
6.1. The Commission's view.....	9
6.2. The Commission's recommendation.....	9
7. The Transitional South African Legal Practice.....	9
7.1. The Commission's view.....	9
7.2. The Commission's recommendation.....	10
8. Authority to render legal service: reserved work.....	10
8.1. The Commission's view.....	10
8.2. The Commission's recommendation.....	11
9. Authority to render legal services: paralegals and in-house attorneys.....	11
9.1. The Commission's view.....	11
9.2. The Commission's recommendation.....	12
10. Authority to render legal services: organizational forms and multi-disciplinary practices.....	12
10.1. The Commission's view.....	12
10.2. The Commission's recommendation.....	13
11. Advertising, marketing and touting.....	13
11.1. The Commission's view.....	13
11.2. The Commission's recommendation.....	13
12. The Law Society of South Africa's Exemption Application.....	14
13. Conclusion.....	14

1. Executive summary

The Competition Commission of South Africa (the Commission) is pleased to provide comments on the Legal Practice Bill 20 of 2012 (the Bill) to the National Department of Justice and Constitutional Development (Department). This submission highlights the impact of certain proposed provisions of the Bill on competition in the legal profession. It also brings to the attention of the Department the findings of the Commission on the Law Society of South Africa's (LSSA) 2004 exemption application on specific professional rules.

The Bill is in conflict with the objectives of the Competition Act 89 of 1998, as amended (hereafter the Competition Act), in that the Bill proposes to entrench as law, specific professional rules that were the subject of the LSSA's 2004 exemption application with the Commission and which was declined by the Commission on the basis that the professional rules were anticompetitive. In principle, the Bill is in conflict with the objectives of the Competition Act in that it continues to enforce professional rules, currently contained in the Attorneys Act¹ and those promulgated by the provincial law societies (professional rules), that conflict with competition objectives. The provisions of the Bill most relevant to the specific rules that the Commission has found to be anti-competitive have thus been identified as professional rules relating to *professional fees; reserved work; organisational forms and multi-disciplinary practices; and advertising, marketing and touting* as well as the envisaged South African Legal Practice Council.

This submission is therefore divided into two parts. The first part deals with the *Commission's views and recommendations* on specific provisions of the 2012 Bill that may violate the provisions of the Competition Act; these include those relating to the anti-competitive professional rules as contained in the 2009 Uniform Rules of the Law Society of South Africa (LSSA). The second part highlights the Commission's findings regarding the 2004 LSSA's submission for exemption of its professional rules.

2. Introduction: Purpose of the Bill

The Commission notes section 3 of the Bill seeks to fulfil various objectives, *inter alia*, to provide for a legislative framework for the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution; broaden access to justice by putting in place (i) a structure to determine fees chargeable by legal practitioners for legal services rendered that are affordable and within the reach of the citizenry; (ii) measures to provide for the rendering of community service by candidate legal practitioners and practising legal practitioners; and (iii) measures that provide equal opportunities for all aspirant legal practitioners in order to have a legal profession that reflects the demographics of the Republic. Further to create a single unified statutory body to regulate the affairs of all legal practitioners in pursuit of the goal of a unified, accountable, efficient and independent legal profession; (d) protect and promote the public interest; provide for the establishment of an Office of Legal Services Ombud; (f) provide a fair, effective, efficient and transparent procedure for the resolution of complaints against legal practitioners; and (g) create a framework for the (i) development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal services by legal practitioners; (ii) regulation of the admission and enrolment of legal

¹ 53 of 1979.

practitioners; and (iii) development of adequate training programmes for legal practitioners and candidate legal practitioners.

In essence, the 2012 Bill will repeal and replace the Attorneys Act² as well as repeal and replace the Admission of Advocates Act.³ The Bill therefore intends to create a category of legal practitioners that will encompass both attorneys and advocates to be regulated by one comprehensive law.

3. A fee structure

Section 3(b)(i) and section 35 of the Bill propose the retention of a fee structure for the profession to determine fees chargeable by legal practitioners, juristic entities and justice centres for legal services rendered that are affordable and within the reach of the citizenry with the aim of broadening access to justice. Thereby a legal practitioner, juristic entity or Legal Aid South Africa may only charge fees for legal services as are in accordance with the fee structure as determined in terms of the Act [Bill], taking into account: the importance, significance and complexity of the legal service required; the volume of work required and time spent in respect of services rendered; the financial implications of the matter at hand; and the qualifications and professional expertise of the legal practitioner concerned; or as may be determined by law. According to section 35(a), a criteria is thereby set that must be taken into account in respect of fees. Section 94(1)(i) proposes a promulgation of regulations by the Minister relating to a fee structure for legal practitioners.

3.1. The Commission's view

The Commission notes that the 2012 version of the Bill has moved away from the previous version of the Bill proposal that a Transitional Council will set fees to be charged by legal practitioners but maintains that the Transitional Council will **recommend** fees to be charged by legal practitioners. This latter proposal therefore will change the current situation where the Law Societies set guideline fees for particular legal practitioners. This to a limited extent addresses the Commission's concern that competitors who are going to be part of the Transitional Council would not fix prices to be charged by legal practitioners. However, the fact that the Transitional Council will predominantly be composed of the legal practitioners is still a concern for the Commission.

The Bill is however, silent on whether legal practitioners can discount below the fees set by legislation. The adoption of this proposed provision as is will mean that legal practitioners, juristic entities and justice centres would be prohibited from accepting remuneration for professional services other than at the tariff prescribed by law. This would practically mean that legal practitioners would not be able to charge fees below the **recommended** minimum tariffs (fee structure) where prescribed. The Commission notes that the proposed fee structure provision might serve as a preventative measure to prevent excessive pricing or overreaching but the Commission is of the view that there are other preventative methods other than proposing a fee structure. Lessons from other countries⁴ indicate that guideline professional fees are not necessary for the ordinary

² 53 of 1979.

³ 74 of 1964.

⁴ Commonwealth countries such as Canada, Ireland, New Zealand, and the United Kingdom; that have the institutional similarity with the current of the South African legal profession as well as those of emerging countries such as India, Brazil and other African countries.

function of the profession or to maintain professional standards. For example, in the United Kingdom and New Zealand, there are no fee guidelines for the legal profession.

The Commission notes that the Bill does not provide for legal practitioners entering into a contingency fee arrangement as provided for in the Contingency Fees Act.⁵ Although section 97(1)(a)(vi) provides that the Transitional Council must make recommendations to the Minister on the fee structure of legal practitioners. According to the Commission contingency fees may be anti-competitive. The Commission is concerned that the absence of provisions in the Bill dealing with the fate of contingency fees as far as the permission and review of such are concerned may cause unnecessary confusion in the profession a later stage.

3.2. The Commission's recommendation

The Commission recommends a provision be included in the Bill that makes it clear that legal practitioners are permitted to charge fees for services rendered below the **recommended** minimum tariff (fee structure). In this manner, price competition is permitted even where there is a fee structure in place. This will incentivise legal practitioners to find innovative methods of reducing their costs and passing these savings to the consumer. In addition, price competition may be important to facilitate access to affordable legal services.

The Commission recommends that any circulars on recommended fees⁶ for the legal profession must be clear that the legal profession is permitted to offer discounts or charge for services rendered below the set minimum tariff. It is the Commission's view that if the overriding concern in setting a fees guideline is to prevent overcharging or over-reaching, this can be achieved by setting price caps or maximum prices. Price caps or maximum prices are permitted in competition law as they provide affordable products to consumers.

The Commission recommends that a provision be included in the Bill dealing with the fate of contingency fees as was the case in the previous version of the Bill where section 37(2) of the previous version of the Bill provided that a legal practitioner, juristic entity or Legal Aid South Africa is not precluded from entering into a contingency fee arrangement as provided for in the Contingency Fees Act of 1997.

4. Professional conduct: code of conduct

Section 36 (1)-(2) of the Bill provides that the South African Legal Practice Council (Council) must develop a code of a code of conduct that will apply to all legal practitioners. According to section 5, among the objects of the Council, will be to enhance and maintain the integrity and status of the legal profession and also determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners. Further to develop norms and standards to guide the conduct of legal practitioners and the legal profession.⁷ The code of conduct will serve as the standard of conduct which legal practitioners and juristic entities must adhere to as failure to do so will constitute misconduct.

⁵ Act no. 66 of 1997.

⁶ Such as the Recommended Conveyancing Fees, Circular No 1/2009.

⁷ Section 5 (f), (g) and (k).

4.1. The Commission's view

The Commission notes that the Bill is silent on whether the charging of fees will be included in the code of conduct of legal practitioners. In this regard, the Commission highlights two concerns relating to codes of conduct. Currently, in practice, a legal practitioner that charges below the guideline fees set by the LSSA is regarded as in breach of the code of ethics and liable to a charge of misconduct. The Commission has received several complaints from legal practitioners that have been charged by the LSSA for not following the guidelines. Subsequent to the rejection of the exemption application of the LSSA by the Commission, the LSSA and the Commission agreed that the LSSA will refrain from prosecuting its members for charging below the minimum fee tariff until new rules that are compliant with competition law are enacted.

4.2. The Commission's recommendation

The Commission recommends that the Bill contain a provision to the effect that legal practitioners are permitted to charge below the minimum fee tariff.

The Commission recommends that the practice of charging below the minimum fee tariff be excluded from practices that fall underneath misconduct by legal practitioners.

5. The South African Legal Practice Council

Section 4 proposes for the establishment of the South African Legal Practice Council.⁸ According to section 20, an executive committee of the Council must be established by the Council comprising of members of the Council. Section 7 therefore proposes that the Council will consist of 10 practicing attorneys and six practising advocates who could be perform any function as determined by the Council.

The Bill seeks to bestow the Council, with various functions with the aim of fulfilling various objectives, among many of these objectives and functions, the Council will regulate legal practitioners,⁹ enhance and maintain the integrity and status of the legal profession,¹⁰ determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners¹¹ and develop norms and standards to guide the conduct of legal practitioners and the legal profession.¹²

5.1. The Commission's view

It is the Commission's view that the objectives of the Council to regulate legal practitioners and to enhance and maintain the integrity and standard of the of the legal profession cannot be inclusive of a function by the Council to develop or recommending a fee structure to the Minister taking into consideration the composition

⁸ A body corporate with full legal capacity to exercise jurisdiction over all legal practitioners thereby replacing the current law society.

⁹ Section 5(d).

¹⁰ Section 5(f).

¹¹ Section 5(g).

¹² Section 6(1)(k).

of the Council. The Council would have, in the majority, attorneys and advocates. From a competition law perspective, it is prohibited to have competitors, who in this case would be attorneys or advocate, set fees for other competitors. This would mean that a fee structure developed by the Council would be largely determined by competitors.

It is the Commission's view that it is important to ensure credibility of the price setting process, from a competition perspective attention must be given to the potential for price fixing by competitors in the market. If price-setting is left to the competitors then the incentive for raising prices higher is built-into the system. This also negates price competition between competitors in the market.

5.2. The Commission's recommendation

The Commission recommends that the Bill provide explicitly who within the Council has the responsibility to set a fee structure.

The Commission recommends that number of attorneys and advocates in the Council be further diluted.

The Commission recommends that the it be made clear in the Bill that the Minister is not obliged to follow a recommendation made by the Council or the Transitional Council on a fee structure.

5.3. The Commission's view

The Commission welcomes the provisions in sections 7 and 98 that somewhat show a dilution of the composition of the Council. The aim of this provision is to ensure balanced representation of stakeholders the Council in that legal academics or other members of the legal fraternity would be represented on the Council. Particularly, section 7(2)(d) that makes specific mention of representation on the Council by members who have experience and knowledge consumer affairs.

The Commission construes this provision (section 7(2)(d)) as including representation by those that have competition law or policy experience and knowledge. The Commission views such representation as crucial as the Council will not only concern itself with ethical conducts and consumer welfare, but it will also address competition dynamics in the legal profession.

It is the Commission's contention that the Council must be independent from the people it is regulating. While the Commission accepts that practicing attorneys and advocates should have a voice and representation on the Council, they should however not dominate the Council. Currently, the composition of the Council is envisaged to be dominated by legal practitioners. To ensure the independence of the Council, the Council should guard against delegating its powers that are sensitive from a competition perspective such as developing guidelines and entry requirements.

5.4. The Commission's recommendation

The Commission recommends that the composition of the Council be diluted further as far as attorneys and advocates are concerned.

The Commission recommends that specific mention of representation of those with competition law or policy be provided for in the Bill.

6. Disciplinary bodies and regional councils

Section 37 of the Bill provides for the establishment of an investigating committee to conduct investigations of all complaints of misconduct against legal practitioners and juristic entities and to refer these to a disciplinary committee. In other words, two types of committees will be established to deal with complaints in the legal profession. Section 23(1) provides for the establishment of regional councils that the Council may delegate powers and functions to that are better performed at regional level, in the interest of the legal profession. According to section 38, complaints of misconduct must be lodged with the regional council.

6.1. The Commission's view

It is the Commission's view that the investigating and disciplinary committees as per region together with the regional councils would replace the current provincial law societies and bar councils. The Commission is concerned about the absence of clear guidance on the powers of the committees as far the subject matter of the investigations is concerned. Currently, the provincial law societies have the power to effectively determine the reservation of work through their determination of what is professional and unprofessional conduct and to discipline members on charges of misconduct if they do not charge for services rendered as according to the guideline fee structure. Also, in terms of section 116 of the Bill, law societies and bar councils or any voluntary associations would continue to perform their functions as according to the existing professional rules for the common interests of the profession until the Bill is enacted into law.

6.2. The Commission's recommendation

The Commission recommends an inclusion in the provisions in the Bill dealing with the establishment of investigating committees and disciplinary bodies clear guidance on the powers of such committees as far the subject matter of the investigations and disciplinary procedure is concerned.

7. The Transitional South African Legal Practice Council

In Section 96(1)(a) the Bill makes provision for the establishment of a Transitional Legal Practice Council (Transitional Council) and later the Council. The Transnational Council, among others members, would consist of 8 attorneys as nominated by the LSSA and 8 advocates as nominated by various constituents in the legal fraternity.

This Transitional Council would be operative for a period of 3 years before the Council takes over. Among the many functions of the Transitional Council will be to make recommendations to the Minister on the fee structure of legal practitioners (section 97(1)(a)(vi)). Also prepare and publish a code of conduct for legal practitioners, candidate legal practitioners and juristic entities. Furthermore, the Transitional Council would make rule and prepare as in provided for in terms of section 108(2).

7.1. The Commission's view

It is the Commission's view that that the implication of the Bill is that the existing rules of the LSSA would still apply until a new code of conduct is published by the Transitional Council or new rules are adopted by the

Transitional Council. Furthermore, disciplinary actions instituted by the Law Society in terms of these rules will remain in force until referred to the Council.

The Transitional Council would make rules and develop codes of conduct to guide practitioners on what prices to charge. The Commission is concerned that the structure and role of the Transitional Council will have legal practitioners, being parties in a horizontal relationship, determine standards and recommending fees. The Commission is still concerned by the fact that the Bill does not make it clear what the content of the rules that the Transitional Council would make would be.

7.2. The Commission's recommendation

The Commission recommends several options that can be considered to address this problem:

- a) *lower the representation of the active legal practitioners from the Transitional Council so that it can be deemed to be independent of the legal profession. This could be achieved by increasing the number of non-practicing legal professionals on the Council itself;*
- b) *the Transitional Council could recommend a fee structure and leave it open to each practicing attorney or advocate to translate into actual charges for services rendered;*
- c) *the transitional Council could recommends fees or a fee structure to the Minister or a panel selected by the Minister to take a final decision;*
- d) *the Transitional Council could form a fees sub-committee dominated by members appointed by the Minister in which the legal fraternity will also have representation. The decision of the sub-committee should then be final; or*
- e) *the Transitional Council could set price caps or maxima and allow the market to compete below the cap.*

The Commission recommends that the Bill be specific on the content of the rules to be made by the Transitional Council and also specify what is likely to be in the new code of conduct.

8. Authority to render legal services: Reserved work

Section 33 of the Bill in its entirety reserves work for legal practitioners. Specifically, section 33(3) of the Bill proposes that subject to any other law no person other than a legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is an advocate, attorney, conveyancer or notary, as the case may be.

8.1. The Commission's view

The Commission judges that the aim here is to protect the independence of legal practitioners by limiting access to admitted and enrolled attorneys and advocates. However, the current regime is likely to stunt the growth of non-legal practitioners who could offer legal services such as conveyancing services but would be restricted from offering these in terms of the said provisions of the Bill. It is conceivable that the more there is service (product) choice the likely it is that services such as conveyancing services would be charged at competitive prices to the benefit of consumers. This provision currently prevents other competent service providers to offer legal services to the public thereby restrict the number of service providers. The restriction is

likely to result in harm to consumer welfare, in that it reduces service (product) choice and could result in high legal fees among qualified practitioners.

8.2. The Commission's recommendation

The Commission recommends that legal professions be opened by *inter alia* allowing other professionals to provide specified legal services and to recognise the synergies between the legal and other professions (estate agents).

The Commission recommends the inclusion in the Bill of provisions providing for the functions that can be performed by legal practitioners and those that can be offered by other professionals.

9. Authority to render legal services: Paralegals and In-house attorneys

Section 35(6) provides that a commercial entity may be established to conduct a legal practice provided that in terms of its founding documents, among other requirements, its shareholding, partnership or membership is comprised **exclusively of attorneys** and that provision is made of legal services to be rendered only under the supervision of admitted and enrolled attorneys.

9.1. The Commission's view

It is the Commission's view that the Bill has failed to make provisions for the masses of para-legals and in-house lawyers currently operating in the legal profession and that section 35(6) in no way addresses concerns that are continuously raised by paralegals and in-house attorneys to practice as legal practitioners. There are no provisions within the Bill to regulate participation of paralegals and in-house attorneys. In fact, the Bill is confusing in that section 33 indicates that no person can be permitted to practice other than a legal practitioner who has been admitted and enrolled. While section 36(6) provides that a commercial entity may be established to conduct a legal practice provided that in terms of its founding documents, among other requirements, its shareholding, partnership or membership is comprised **exclusively of attorneys** and that provision is made of legal services to be rendered only under the supervision of admitted and enrolled attorneys. The "exclusivity of membership of a legal practice by attorneys" is concerning to the Commission as this has a direct negative impact on multi-disciplinary practices.

According to section 33(5) any person (for example: paralegals, estate agents) who renders legal services without authority would be guilty of an offence. In other words the Bill maintains the current anti-competitive *status quo* by:

- a) *reserving legal work to only admitted practitioners;*
- b) *restricting the sharing of fees between attorneys and non-attorneys*
- c) *not permitting multi-disciplinary practices*
- d) *restricting the sharing of fees between attorneys and/or advocates and non-legal practitioners.*

The Commission notes the lack of provisions in the Bill catering for paralegals to render defined or specified legal services with the permission of the Minister.

9.2. The Commission's recommendation

The Commission recommends that the Bill make express provision for the regulation of paralegals and in-house lawyers and possibly estate agents who perform conveyancing work. Further, the Bill would be purposeful in defining what **legal services** are in relation to work that can be performed by admitted legal practitioners and non-legal practitioners.

The Commission recommends that the provisions of sections 36(6) be revised to take into consideration multi-disciplinary practices and other legal practitioners who are not attorneys or advocates that desire to establish a commercial entity with attorneys or advocates.

The Commission recommends that consideration be given to section 124(6) under the previous version of the Bill as the provision could serve as a basis for inclusion of paralegals and other legal practitioners who are not attorneys or advocates in the 2012 Bill.

The Commission recommends that the following could be defined in the Bill:

- a) *entry requirements (such as examination and/or vocational training);*
- b) *accountability and registration including appropriate insurance;*
- c) *consumer protection measures.*

In anticipation of meaningful competition but it is important that these entry barriers are not too high as to prevent entry by the mentioned non-legal professions.

10. Authority to render legal services: Organisational forms and multi-disciplinary practices

Sections 34 (4)(b) provides that attorneys may practice as part of a commercial juristic entity, but only make over to share or divide any portion of their professional fee whether by way of a partnership, commission, allowance or with an attorney or otherwise. Section 35(a) provides that advocates may not practice as part of a commercial juristic entity or make over to share or divide any portion of their professional fee whether by way of a partnership, commission, allowance or otherwise. Section 35(6) further goes on to provide that a commercial entity may be established to conduct a legal practice provided that in terms of its founding documents, among other requirements, its shareholding, partnership or membership is comprised **exclusively of attorneys** and that provision is made of legal services to be rendered only under the supervision of admitted and enrolled attorneys.

10.1. The Commission's view

The Commission contends that sections 34(4)(b) and 35(6) is prohibiting legal practitioners from sharing fees with persons who are not practicing attorneys or advocates, except in the case of legal practitioners who have been struck off the roll. In this regard, the Bill ignores the growing relationship and interaction between the legal fraternity and professions such as accounting, auditing, taxation and economists. The Bill essentially prohibits the sharing of offices and division of fees by the legal profession with any other person or entity other than a legal practitioner. The Commission is of the view that the prohibition on multi-disciplinary work does not take into account recent development where law firms provide a one-stop service providing legal advice and working with other non-legal professions.

As much as the Commission recognizes the need to protect the integrity of the legal profession, growing synergies between the legal profession and other relevant associated professions must be accommodated, properly recognized and regulated. The Bill must provide for defined modalities and the rules under which

multi-disciplinary practices can evolve. Provisions relating to the appropriate regime to allow other legal professionals like paralegals to offer their services could also be provided for in the Bill.

10.2. The Commission's recommendation

The Commission recommends that section 6(5)(i) of the Bill that provides that the Council must advise the Minister on multi-disciplinary legal practices with the view to promoting legislative and other interventions on multi-disciplinary legal practices should be expanded to expressly provide for limited forms of ownership with the majority ownership by legal practitioners so to safeguards the public from fraudulent conduct by non-legal professionals.

11. Advertising, marketing and touting

The statutory law¹³ and 2009 Uniform Rules of the LSSA prohibits a legal practice from holding itself out as specializing in any branch of law, the prohibition of certain acts of advertising, marketing and/or touting which constitute unprofessional, dishonourable or unworthy conduct by a legal practitioner. On the other hand, a legal practitioner is barred from stating his area of specialization or to market his services in any form.

11.1. The Commission's view

The Commission notes that in practice currently the legal profession is allowed to market and advertise itself to a certain extent despite the statutory law and the professional rules prohibiting such. This is in line with the practice in many countries that have opened up advertising and marketing to the legal profession as it is in the consumers' interest.¹⁴

The Commission is also well aware of the current situation with respect to rules on advertising, marketing and touting and the power of law societies to effectively determine unprofessional conduct on the basis of these rules. According to the Commission, restrictions beyond those of countering false and misleading advertising cannot be sustained.

It is with concern that the Commission notes that the Bill is silent on the question of advertising, marketing and touting when advertising and marketing ultimately provides useful information to enable a consumer/client select a service provider.

11.2. The Commission's recommendation

The Commission recommends that express provision be made in the Bill for the allowance of advertising and marketing where a complete ban on advertising and marketing would be prohibited.

The Commission recommends that the general advertising standards alluding to truthfulness of the content and not mislead the public be prescribed for the legal profession.

¹³ Attorney's Act 53 of 1979 and subsequent amendments.

¹⁴ Australia, Spain, Korea, Turkey, Poland, Portugal, Lithuania, Indonesia, Romania, Czech Republic, Italy and Ireland.

The Commission recommends that the Bill in the event that it makes express provision for marketing and advertising, it should also make provision for definitions of such.

The Commission recommends that express provision in the Bill on touting be made. In that, what amounts to touting must be clearly defined given the current various interpretations of what is touting and which are a source of much confusion for the Commission and the legal fraternity.

12. The Law Society of South Africa's Exemption Application

In 2004, the LSSA made an application to the Commission for an exemption of various rules of the profession in terms of Schedule 1 of the Competition Act. Schedule 1 of the Act provides that: the Competition Commission may exempt all or part of the rules of a professional association from the provisions of Chapter 2 of the Act for a specified period, if having regard to internally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain the professional standard; or the ordinary function of the profession; and upon receiving the application the Commission must publish the notice of the application in the Gazette.

The LSSA sought an exemption from the Act for its rules on:

- a) *professional fees;*
- b) *reserved work;*
- c) *organisational forms and multi-disciplinary practices; and*
- d) *advertising, marketing and touting.*

The Commission conducted an investigation by discussing with attorneys, the Department and by reviewing jurisprudence from other jurisdictions. The Commission found that all the rules as above were not compliant with competition law and thus were not reasonably required to maintain the professional standard or the ordinary function of the profession. The Commission thus declined to exempt the afore-said rules and published its decision in the Government Gazette 34051 dated 04 March 2011, Notice 113 of 2011). The LSSA was informed of the Commission's findings in February 2010. The Commission opted for an advocacy approach to solicit voluntary amendment of the said rules. To that end it engaged the LSSA before publishing its reasons on the 04 March 2011. The LSSA and the Commission reached a *modus vivendi* for the interim until a new regulatory regime is in place. It was agreed that the Law Society will desist from prosecuting firms and attorneys in terms of the rules. In turn the Commission agreed not to prosecute any cases in respect of the current rules. The LSSA and the Commission also committed to continue engaging to further refine the draft rules and comment on the proposed legislation.

The Commission cautions that the *status quo* has a direct bearing on the regulation of the legal profession during the transition period. It is therefore important that the Bill be harmonised with competition principles and specifically take into account the Commission's ruling on the LSSA's rules.

13. Conclusion

The Commission recognise that it is important to have rules whether they are encompassed in an Act or regulation or in a practice code ensuring the integrity of the profession and to protect consumers from unscrupulous legal practitioners. However, profession rules must be balanced with competition principles.

Effective competition in the industry will ensure product choice, innovation and competitive prices. Where it is necessary to restrict competition such a restriction should be reasonably required for the ordinary function of the profession.

The 2012 Bill has not considered the competition concerns as raised by the Commission on the previous version of the Bill. It is in this regard that the Commission offers the above-mentioned recommendations and the over-all recommendation that the 2012 Bill would serve the objective of a competitive legal profession by carrying out changes to the Bill in order to eliminate the specified anti-competitive statutory provisions.

This would ensure that the Bill is amended to include the purpose and object of promoting competition within the legal profession as well as provide for a role for the Competition Commission in considering changes to the rules governing legal practitioners which have competition effects including within the Bill's transitional provisions authority for the Transitional Council to review and amend or repeal or replace rules with anti-competitive effect.